



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200914067

JAN 02 2009

UIC: 402.00-00

SET:EP:RA:T4

Legend:

Taxpayer A =

IRA X =

Credit Union Z =

Amount C =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Dear

This is in response to your request dated _____, as supplemented by
your letter dated _____, in which you request a waiver of the 60-day rollover
requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in
support of the ruling requested.

Taxpayer A, age , represents that on Date 1, he received a distribution from IRA X totaling Amount C. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to an error by personnel of Credit Union Z which led to Amount C being placed into several non-IRA certificates of deposit. Taxpayer A further represents that Amount C has not been used for any other purpose.

On Date 1, Taxpayer A received a distribution from IRA X totaling Amount C. Taxpayer A intended to rollover Amount C into an IRA certificate of deposit at Credit Union Z. On Date 2, Taxpayer A advised personnel of Credit Union Z of his intent that this transaction be treated as a rollover of Amount C into an Individual Retirement Account at Credit Union Z. However, Amount C was placed in error by Credit Union Z into non-IRA certificates of deposit.

Taxpayer A did not realize the error committed by personnel of Credit Union Z until he was notified by his tax preparer on Date 3. On Date 4, Taxpayer began discussing the matter with personnel from Credit Union Z, including the Supervisor of Credit Union Z who admitted to the error by its personnel in not putting Amount C into an eligible rollover IRA, as directed by Taxpayer A.

Based on the above facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount C.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amounts paid or distributed out of an IRA to the individual for whose benefit the account is maintained if:

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution; or,

- (ii) the entire amount received (including money and other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the one-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(B) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country, or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and, (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to an error by personnel of Credit Union Z which led to Amount C being placed in non-IRA accounts.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount C. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount C into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-

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day requirement, are met with respect to such contribution, Amount C will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you wish to inquire about this ruling, please contact _____, SE:T:EP:RA:T,
I.D. No. _____, at () _____.

Sincerely yours,

for Sam B. Worsham

Donzell Littlejohn, Manager
Employee Plans, Technical Group 4

Enclosures:

Deleted Copy of Ruling Letter
Notice of Intention to Disclose